

Marriage Contract and Legal Results Against Women

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Abstract--- *In the aspect of Islamic law, mut'ah marriage was permitted by the Messenger of Allāh W during the war period. However, this acquisition has been abolished or the law of marriage mut'ah is forbidden and will be sinful for those who do it. In the aspect of national law, contract marriage is considered legal flaw because it contradicts Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, Article 1337 and Article 1332 of the Civil Code, the principle of marriage and the purpose of marriage. Based on these provisions, a legal marriage is carried out in accordance with religious teachings and beliefs and does not conflict with moral values. Registered or registered marriages in accordance with applicable laws and regulations will be protected by the State. The practice of contract marriage actually positions the position of women very weak in the eyes of the law because the marriage is considered never to have taken place, so that the wife is not considered as a legal wife, the wife is not entitled to a living and inheritance from her husband if he dies and the wife is not entitled to Gono Gini's assets if it occurs farewell, because legally marriage, marriage contract is considered to have never happened.*

Keywords--- *Contract Marriage, Legal Consequences, Women.*

I. INTRODUCTION

Carrying out a marriage or marriage is a form of carrying out the sunnah of the Prophet Muhammad and at the same time carrying out religious orders. The existence of religious orders to get married aims to maintain the honor of the human race and protect the human race from the heinous act of adultery. According to the Compilation of Islamic Law (KHI), marriage is a very strong contract (miitsaaqan ghaliidzan) to obey Allah's commands and carry out them is worship.

If, marriage is worship then it must be done in accordance with the guidance of the Islamic religion with the terms, harmony and justified manner in Islam. God created humans like other creatures, did not let his instincts do as he pleased, or let the relationship between men and women disorganized disorderly. However, Allah SWT laid down the signs and rules as explained in various hasdis of the prophet Muhammad SAW (Nasution, 2005). the purpose of the arrangement is not to obstruct or obstruct the human race from marriage, but the rules of marriage are to safeguard the honor and protect the rights and obligations of those who carry out the marriage.

Marriage is a human right that cannot be limited or reduced. In the Qur'an, Allah Almighty explicitly states in his word that "the Most Holy God, who created them all in pairs, both from what is grown by the earth and from

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themselves, as well as from what they do not know (QS Yasin: 36). " Marriage or marriage is a divine provision for all His creatures. So, marriage is not just channeling sexual desire alone but marriage is a religious command that contains various regulations on how to carry out marriage, the rights and obligations of husband and wife and children, divorce, inheritance and other regulations.

However, the most common phenomenon today is marriage based on a contract or agreement with the agreement that the bride and groom clause will get paid a certain amount, a limited marriage period and a guarantee of a better future. This type of marriage is called contract marriage or passport marriage (Aidatussholihah, 2012). Contract marriages are often associated with the arrival of foreign tourists coming to Indonesia, especially foreign tourists from the Middle East. But in reality, it is not only foreign tourists who contract marriages, but also many local tourists who come to West Java, especially in the peak area, Bogor (Aidatussholihah, 2012). The term contract marriage that is rife in the Peak Area is used to refer to marriages made with tourists, both foreign and local, that are limited by a certain time without any standard rules and do not follow the applicable marriage rules as they should and are not legally registered in the State administration.

This phenomenon of contract marriages will adversely affect women because the position of women is very weak and the men can just leave and disappear. If something happens that is detrimental to the woman during the period of contact marriage, what is the legal protection? This article will try to analyze the marriage of contacts and legal protection of women.

II. METHOD

This type of research is legalistic, doctrinal or normative. According to Rowe, normative research aims to find, explain, assess, analyze and systematically state facts, principles, concepts, theories, laws so as to find new knowledge and ideas to be suggested as a change or renewal. (Rowe, 2009). In this study, all documents, references, facts, theories, doctrines and laws related to marriage contact and legal consequences of women in Indonesia will be examined.

According to Mandi Zahraa, normative research is "A *fresh, diligent, systematic, inquiry or investigation of the factual data and or theoretical concepts of the rules and principles of a particular legal issue in an attempt to discover, revise or improve the relevant concepts, theories, principles and application* (McCrudden, 2006)." Normative research intends to conduct a new, thorough, systematic study, investigation of facts, data, concepts, principles, theories, specific legislative issues to make discoveries, reviews and changes to concepts, theories, principles, formulas and models. In addition, normative research can also be carried out on issues relating to the overlap of a law, between one law contradicting and there is confusion or obscurity in a law.

The approach used in legalistic research can be in the form of a statute approach, a historical history, a case analysis approach and a legal comparison approach. (*comparative approach*) (Diantha, 2017). However, this study only uses a legal approach or laws, both Islamic law and national marriage law with the aim of analyzing laws relating to the arrangements for contact marriage and legal protection against women in Indonesia..

III. LITERATURE REVIEW

In Indonesian, marriage comes from the word "marriage", which etymologically means to form a family of the opposite sex (having sexual relations or intercourse)(Departemen Pendidikan dan Kebudayaan, 1995). Anwar Harjono said that "the word marriage is the same as the word marriage or *zawaj* in the term *fiqh*" (Hasan, 2011). According to the term jurisprudence, marriage means a contract (agreement) that contains the ability to have sexual relations by using the marital *lafaz* or *tazwij* (Hasan, 2011).

In Article 1 of Law No. 1 of 1974 concerning Marriage formulates that marriage is a bond born between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on a Godhead. In the Compilation of Islamic Law it is stated that marriage is marriage, which is a very strong contract and *mitsaqan gholiidhan* to obey God's commands and carry out them is worship. In the compilation of Islamic law it is emphasized that the purpose of marriage is to realize a *sakinah, mawaddah* and *rahmah* domestic life "

Based on these laws and regulations that marriage is not temporary but forever the ultimate goal is to form a *sakinah, mawaddah* and *rahmah* family. Marriage is eternal, meaning that marriage is not limited in time. The marriage will last forever until death separates husband and wife. This provision implicitly prohibits the existence of marriages that are limited by a certain time, namely contract marriages. This is because the purpose of marriage is to form a happy and everlasting family (household), while the concept of contract marriage is only to get temporary pleasure or in accordance with the time period agreed upon by the parties (husband and wife).

Contract marriages in Islamic law are known as marriage *mut`ah*. *Mut'ah* is derived from the Arabic language *Al-Tamattu* 'means to have fun, but in terms of marriage *mut`ah* is a marriage that is carried out solely to vent the passions and have fun or a marriage contract made by a man against women for one day, one week, or one month (Mardani, 2011). Named *Nikah Mut'ah* because her men intend to have fun for a while. A. Syarafuddin al-Musawiy, that the origin of the word *mut'ah* (Arabic) is something that is enjoyed or given to be enjoyed (Al-Hamidy, 2008). Likewise, the verb *tamatta'a* and *istamta'a* come from the same root, which is to enjoy or enjoy something. with something given to him in the form of property, food, clothing or other things. When the time is over, they naturally separate without the word *thalaq* and without inheritance (Al-Hamidy, 2008).

Zomakhsyari, defines *mut`ah* marriage as marriage for a predetermined or known time, for example one or two days, a week or more, a month or even years. (Citra, 2016). According to Mutawalli, *mut'ah* marriage is also called temporary marriage (contract), which is to get married for one day, one week, six weeks, one year, or whatever according to the agreement. The four schools of law agreed that *mut'ah* marriage is unlawful. If the marriage contract is termed, the contract becomes null and void. Married relationships become adultery relationships (Assya'rawi, 2007).

Regarding *mut`ah* marriage, Malikiyah scholars, Shafi'iyah, and Hanabilah agreed that *mut'ah* marriage was the same as *mu`aqqat* marriage (Al-Goffar, 2008). Whereas Hanafiyah scholars require the word *mut`ah* in *mut`ah* marriage, such as "I marry *mut`ah* with you". The essence of marriage is to tie the marriage contract to a certain time

(Al-Jaziri, 1986). The time limit is considered contrary to the purpose of marriage which is to form a happy and eternal family.

When viewed from the aspect of Islamic history, mut'ah marriage was permitted by the Prophet SAW during the war. The friends at that time were single and left their wives for months. However, he later banned and abolished the rules of marriage mut'ah (Khon, 2009). Prophet Muhammad SAW said "O people, in fact I have previously allowed you mut'ah with women. Now Allah has forbidden it until the Day of Judgment. So, whoever has a wife from mut'ah, he should divorce and you should not take what you have given him. "

The companions of the prophets who fought wanted to castrate his cock to avoid adultery. However, the Prophet forbade this action so that the prophet Muhammad SAW said "From the mas'ud said: at that time we were at war with the Prophet Muhammad and not with us women, so we said: can we castrate (our genitals). So Raulullah SAW forbade us to do that. And the Prophet gave us relief to marry a woman with a dowry of clothes until one time (Rifa'i, 1978)." According to Nawawi in his words that his prohibition and permissibility occurred twice, his permissibility before the khaibar war was then forbidden in the khaibar war and then allowed again in the year of the conquest of Makah (the year of Authas), after which the marriage of Mutah was forbidden forever, so that rukhshah was forbidden and then allowed again in the year of the conquest of Makah (the year of Authas), after which the marriage of Mutah was forbidden for ever, so that rukhshah was forbidden. all the time (Ridwan, 2014).

Allah Almighty says "And those who maintain his genitals, Except for their wives or slaves they have, So surely they in this matter are not blameworthy. Whoever seeks beyond that, Then they are the ones who transgress the limits." (Q. S. al Maarij: 29-31). From this verse, it is known that the cause of having intercourse is only through two ways, namely authentic marriage and slavery. Abd Shomad is of the view that a mut'a woman is neither a wife nor a slave. With that, it is very clear that sexual relations are only allowed with wives or slaves, whereas wives of mut'a marriages do not function as wives because (Shomad, 2010):

- a. Do not inherit each other, while the marriage contract is the cause of inheritance;
- b. Idah nikah mut'ah is not like ordinary marriage;
- c. With a marriage contract, a person's rights in relation to a four-wives wife are reduced, while that is not the case with mut'ah;
- d. By doing mut'ah a person is not considered to be a muhsin because women who are taken by mut'ah do not function as wives, because that mut'ah does not make women the status of wives and also are not slaves, including those who commit mut'ah in the word of God.

The passages above have led to differences of opinion among the scholars regarding the law of marriage for now. According to Sunni scholars, the verse regarding permissibility of mut'ah marriage has been removed with a verse explaining the safekeeping of farji, talak, iddah, and also the existence of ijma '. Therefore, mut'ah marriage is included in the category of prohibited marriages (Al-Amili, 1992). Unlike the case with the Shiite group, they assume there is not a single verse or hadith that erases the permissibility of mut'a marriage, even according to them the verse about mut'ah is a verse that is good (Al-Amili, 1992). However, if examined more broadly some authentic hadith of the Prophet Muhammad SAW mentioned above, that mut'ah marriage is allowed in the era of the Prophet

Muhammad in a state of emergency. However, this acquisition has been abused by some of the above hadiths. Therefore, it is very clear that this mut'ah marriage law is haram and will sin for those who do it.

IV. RESULT AND DISCUSSION

Indonesia is one of the countries that upholds women's rights both legally, economically, politically and culturally. At present, there are institutions for the protection of women that have been authorized and recognized by the State, such as the National Commission on Violence Against Women (Komnas HAM). Even in the political aspect, the quota of women who are included in parliament reaches 30 percent so that women are expected to be able to defend their people from all forms of violence both physical and psychological violence. In the legal aspect, Indonesia adheres to the principle of equality before the law (Equality before the law principle). Enforcement of the law does not discriminate between sexes but all people are the same and there is no special treatment of certain gender (Nazar, 2012).

In the aspect of marriage law, every woman who takes a marriage is required to carry it out legally, both legally and religiously. Legitimate marriages are based on the laws of the State so all consequences arising after marriage can be held accountable both during the period of marriage, during the marriage period and the end of the marriage period. Therefore, Law No. 1 of 1974 concerning Marriage and Compilation of Islamic Law not only regulates the pillars and conditions but also regulates the rights and obligations as well as the legal consequences arising after the marriage relationship. In addition, if there is an act of violence in the household during marriage, there are several laws that can be applied to protect women such as Law No. 1 of 1946 concerning the Criminal Code and Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

Marriage which is legal and religious in the country and is not registered or registered according to applicable laws and regulations. Therefore, the state can protect women from all legal consequences that arise after marriage. This is due to the legal apparatus having the authority to force the parties to undergo their marriage in accordance with existing laws and regulations. The practice of contract marriages actually positions the position of women very weak in the eyes of the law because the marriage is considered to have never taken place, so women do not get anything from the marriage.

Contract marriages are judged to be legally flawed because they conflict with Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage. Article 2 paragraph (1) determines that marriage is legal if it is carried out according to the law of each religion and belief. In the aspect of Islamic law, it has been explained above that the majority of scholars hold the view that contract marriages are prohibited and anyone who does so is a sin. Mut'ah marriage was never allowed in conditions of war, after that the Prophet Muhammad forbade the marriage of Mut'ah (Koro, 2010). Therefore, when referring to Article 2 paragraph (1) of the Marriage Law, if the Islamic religion adopted by both partners to carry out the marriage contract, then the marriage is automatically invalid.

Looking at the practice of contract marriages that occur, it seems clear that the objective elements of an agreement are not fulfilled. Something that can be objectively promised is in the form of goods in accordance with Article 1332 of the Civil Code and Law Number 1 of 1974 concerning Marriage itself. The Marriage Law states that

the agreement cannot be ratified if it violates the boundaries of religious and moral law. The same thing is also stated in Article 1337 of the Civil Code which stipulates that a cause is prohibited if it is prohibited in the law or contrary to good morals and public order. Article 1335 of the Civil Code states that an agreement without a cause, or that has been made for a false or forbidden reason has no legal force. Contract marriages that are practiced today are not based on love, honesty, sincerity of volunteerism, but the purpose of contract marriages is only to prioritize lust by ignoring the nature of marriage itself.

In addition, contract marriages contradict the principles of marriage. According to Muhammad Daud Ali, In bonding a marriage as a form of sacred promise between a man and a woman is covered by several principles of marriage, one of which is the principle of marriage for ever. This principle emphasizes that marriages are held to carry out offspring and foster lifelong love and affection. This principle is contrary to the concept of contract marriages which are carried out within a certain period of time that was agreed upon in advance by obtaining certain rewards.

In Article 2 paragraph 2 of Law Number 1 of 1974 Concerning Marriage determines that each marriage is recorded according to the applicable laws and regulations. This clause is a form of state recognition of the disputes that are carried out so that legally, due to the law of not recording marriage is (Koro, 2010):

1. Marriage is considered illegal;
2. The child only has a Civil relationship with his mother;
3. Child and mother are not entitled to living and inheritance;
4. Lack of marriage certificate approval;
5. Children born do not have certificates;
6. Not getting recognition from the state;
7. The marriage does not have legal protection and legal certainty;
8. Absence of shared assets.

In addition, a contract wife will not get her rights as a wife, where those rights legally include (Koro, 2010):

1. Wife is not considered as a legal wife;
2. The wife is not entitled to living and inheritance from her husband if he dies;
3. The wife is not entitled to gono assets if there is a separation, because legally the marriage, the marriage contract is considered to have never happened.

The rights mentioned above will not be obtained by the contract wife, because the marriage does not have legal certainty. A wife will not be able to sue anything against her husband, because it is limited by contracts or agreements that have been made and agreed upon together. Where the contract or agreement is very detrimental to the woman. This is in accordance with the principle of *pacta sun servanda*, meaning that the agreement made applies as a law for the parties (Bahri, 2017). So the contract that has been agreed is binding on both parties, so the marriage ignores the meaning of the purpose of the marriage itself. He made you love and affection. Truly this means that there are signs for those of you who think. " (Q. S. Ar-Rum (30): 21).

V. CONCLUSION

All couples who wish to have a marriage must comply with applicable laws and regulations so that the marriage is legally valid both in religious law and in State law. Legitimate marriages are based on the laws of the State so all consequences arising after marriage can be held accountable both during the period of marriage, during the marriage period and the end of the marriage period. Therefore, Law No. 1 of 1974 concerning Marriage and Compilation of Islamic Law not only regulates the pillars and conditions but also regulates the rights and obligations as well as the legal consequences arising after the marriage relationship. In addition, if there is an act of violence in the household during marriage, there are several laws that can be applied to protect women such as Law No. 1 of 1946 concerning the Criminal Code and Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

Marriage which is legally valid and the state law and registered or registered according to the applicable laws and regulations, the State can protect the legal consequences caused after marriage because the law has the authority to force the parties to undergo their marriage in accordance with existing laws and regulations. The practice of contract marriage actually positions the position of women very weak in the eyes of the law because the marriage is considered never to have taken place, so that the wife is not considered as a legal wife, the wife is not entitled to a living and inheritance from her husband if he dies and the wife is not entitled to Gono Gini's assets if it occurs farewell, because legally marriage, marriage contract is considered to have never happened.

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